IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1003 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JITENDRABHAI KANAIYALAL ASHAR

Versus

GAFARBHAI MUSABHAI NAGANI

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Appearance:

MR MB PARIKH for Petitioner

MR DIVYESH SEJPAL for Respondent No. 1

MR.P.K.SHUKLA A.G.P.for Respondent No. 2

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/02/2001

ORAL JUDGEMENT

1. Rule. Mr.M.B. Parikh for the Revisioner, Mr.Divyesh Sejpal for respondent no.1 and Mr.P.K. Shukla for respondent No.2.

2. The Revisioner herein is the defendant in Miscellaneous Civil Application No.39/2000 preferred by respondent no.1 seeking permission of the learned Civil Judge, Amreli to prefer a suit in forma paupers which is yet not decided. An application was moved on 24th August, 2000 by the plaintiff/ present respondent for appointing Commissioner for drawing a panchnama of the house in question which was allowed. This aggrieved the original defendant/ present respondent no.1 and he has challenged that order by this Revision Application under Section 115 of Civil Procedure Code.

3. Mr.M.B. Parikh, has contended that the Court committed jurisdictional error in allowing the application at a stage when the suit was not even numbered and application to sue forma paupers is pending. He submitted that the Court could not have exercised the powers to help the plaintiff to collect the evidence with regard to actual possession and therefore the order is bad. Mr.Sejpal, on the other hand submitted that respondent no.1/ original plaintiff is prepared to pay the Court fee stamp and therefore the Revision may not be entertained.

4. Having regard to the contentions, it is apparent that learned Judge has passed an order in a suit which is not numbered. The plaintiff present respondent no.1 is not permitted to sue in forma paupers when the application is pending the decision. Under the circumstances the Court committed a jurisdictional error in granting application for appointment of Commissioner. This reason itself is sufficient to entertain this Revision Application. The Court does not deem it necessary to enter into the merits of the application of appointment of the Court Commissioner.

5. It would be open for the Opponent No.1 to prefer a fresh application for appointment of Commissioner. It shall be decided by the Court after hearing the other side in accordance with law.

6. Revision is allowed. Order passed by Fifth Joint Civil Judge, (Senior Division) on 13th September, 2000 in Civil Miscellaneous Application No.39/2000 for appointment of Court Commissioner is hereby quashed and set aside. Rule is made absolute.

(A.L. DAVE, J).

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